NO. X06-UWY-CV18-6046436-S	**:**	**SUPERIOR COURT**
ERICA LAFFERTY, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 30, 2022**

NO. X06-UWY-CV18-6046437-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 30, 2022**

NO. X06-UWY-CV18-6046438-S	**:**	**SUPERIOR COURT**
WILLIAM SHERLACH, ET AL.	**:**	**COMPLEX LITIGATION DOCKET**
V.	**:**	**AT WATERBURY**
ALEX EMRIC JONES, ET AL.	**:**	**MARCH 30, 2022**

REPLY IN SUPPORT OF MOTION FOR FINDING OF CIVIL CONTEMPT, ISSUANCE OF ORDERS TO SECURE ALEX JONES'S ATTENDANCE AT DEPOSITION, AND ISSUANCE OF FURTHER SANCTIONS ORDERS[1]

Alex Jones's strategy of obfuscation and delay tactics is now all too familiar territory. His refusal to fairly produce evidence in this case has already resulted in profound prejudice to the plaintiffs and a default. His refusal to be deposed is a new version of the same evasive and unfair

[1] This Reply supports the plaintiffs' 3/25/22 Motion for Contempt, DN 750, and responds to both of the Jones defendants' March 28 Objections, DN 751 and DN 752.

litigation tactics. And once again, his refusal to follow the rules of discovery defies the Court's authority, burdens the court system, prejudices the plaintiffs, and benefits him and his co-defendant companies. Alex Jones is in contempt of court, and the Court should enter penalties and sanctions accordingly.

I. MR. JONES' CONTEMPT IS PROVED

In a civil contempt proceeding, "the movant has the initial burden to show that there was a clear and unambiguous order entered by the court and that the alleged contemnor is not in compliance with that order." *In re Leah S.,* 284 Conn. 685, 693-94 (2007); *Office of Chief Disciplinary Counsel v. Chomick*, 2019 WL 3248550, at *1-2 (Conn. Super. June 19, 2019) (Sheridan, J.). If noncompliance with a sufficiently clear and unambiguous court order is found, the court must then determine whether the defiance of the court order is willful, or whether it may be excused by a good faith dispute or misunderstanding. *In re Leah S.,* 284 Conn. at 694; *McBurney v. Verderame*, 2017 WL 5641591, at *4 (Oct. 23, 2017) (Sheridan, J.). "The ultimate conclusion as to whether a good faith dispute or misunderstanding will excuse a finding of contempt is within the discretion of the court." *Id. (citing Bank of New York v. Bell,* 142 Conn. App. 125, 131, *cert. denied*, 310 Conn. 901 (2013)).

The undisputed facts show willful noncompliance. The Court ordered Mr. Jones to attend his March 24 deposition three times. DN 753, 3/23/22 Hrg. Tr. at 31:2-8 (ordered Mr. Jones to attend on the record at the March 23 hearing) DN 735, 3/23/22 Order (written order following hearing); DN 744.10, 3/23/22 Order (denying protective order and ordering that deposition will proceed). Mr. Jones understood the order but chose not to attend the deposition.[2] At the March

[2] The Jones defendants claim there is a lack of evidence, an argument which only highlights the shortcomings of their own presentation. It is the Jones defendants who have chosen not to submit new evidence, presumably because none would be of assistance to them. Moreover, the key facts

24 deposition, Attorney Pattis represented to counsel on the record: "Mr. Jones intends to remain at home under his doctor's orders *and understands that this is not the Court's order.*" Ex. A, 3/24/22 Tr. A. Jones – Not Appearing, at 5:10-12 (emphasis supplied). That evidence alone easily proves Mr. Jones's contempt.

And that is by no means all the evidence before the Court. The record also establishes that on March 23, Mr. Jones ignored the Court's ruling and did not attend his deposition The Jones defendants make no argument that Mr. Jones had *any* belief that his March 23 failure to attend his deposition was excused.

The record establishes that Mr. Jones was *repeatedly* notified by the Court that the submissions by Dr. Marble and then by Dr. Marble and Dr. Offutt did not establish cause to avoid his deposition. On March 22, considering an *in camera* submission apparently authored by Dr. Marble, the Court denied Mr. Jones's requests to be excused from his deposition for medical reasons. DN 730.10 (denying Emergency Motion for Protective Order). The Court found the letter of Dr. Offutt likewise insufficient, and ordered Mr. Jones to appear for deposition on March 24 on pain of being found in contempt. DN 744.10, 3/23/22 Order.[3]

And the record establishes that Mr. Jones's supposed medical issues did not affect his ability to work. While he was asserting that he could not attend his deposition for medical reasons, Mr. Jones was appearing on his show. Mr. Jones's counsel conceded that Mr. Jones was

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are conceded by the Jones defendants. *E.g.* DN 752, Objec. at 6 ("There is no dispute that Mr. Jones did not appear for his deposition on March 24, 2022 as ordered.").

[3] In support of both their Objections, the Jones defendants attach the same affidavit from Dr. Marble and letter from Dr. Offutt that were submitted in support of their March 23, 2022 Renewed Emergency Motion for Protective Order. The Court has already found that these submissions fail to establish that Mr. Jones was unable to attend his deposition.

broadcasting live on both the day the emergency motion was filed and the day it was argued. DN 737, 3/22/22 Hrg. Tr. at 18:16-17 (conceding Mr. Jones was broadcasting on March 21); DN 733, Jones Defs.' 3/23/22 Notice (conceding Mr. Jones was broadcasting on March 22 from the studio, which is not at his home). As the Court found, and the Jones defendants do not dispute, "Mr. Jones has by all accounts broadcast live from his studio on Monday and Tuesday, in disregard of Dr. Marble's purported instructions to stay home and rest." DN 744.10, 3/23/22 Order.

The Jones defendants do not dispute that Mr. Jones was back on the air on March 25 – the day after he supposedly could not attend his deposition – claiming that his medical condition turned out to be a sinus blockage. *See* DN 752, 3/28 Def. Objec. at 2 (stating that "Mr. Jones … chose[] to reveal one of his medical conditions – a sinus blockage – on his television [sic] show"). Nor have they ever refuted the plaintiffs' counsel's representations that Mr. Jones recorded broadcasts on March 23, which then aired that same day. If Mr. Jones could be recorded for his audience, he could be recorded for this case. It is hard to imagine a clearer record of willful noncompliance.

The Jones defendants do not even attempt to argue an inability-to-comply defense – presumably because they understand that on this record, none is available to Mr. Jones. Their only argument is that the last line of the Court's March 23, 2022 Order is unclear (it is perfectly clear) and that this created a hypothetical exception into which "Mr. Jones fell." DN 752, Def. Objec. at 7. The last line of the Court's March 23 Order reads: "Of course, if, as Dr. Offutt indicates, he develops escalating symptoms such that he is hospitalized, that change in circumstance would excuse his attendance at the court ordered deposition." DN 744.10, 3/23/22 Order. The text is plain: if Mr. Jones developed "escalating symptoms" and was hospitalized due

to those symptoms, then his attendance could be excused. Moreover, there is no evidence whatsoever before the Court either that Mr. Jones developed escalating symptoms or that he was hospitalized. The Jones defendants' counsel's unsworn hypotheticals about a supposed "exception for [] absence" in the Court's March 23 order, what Mr. Jones "could have concluded" the Court's order meant, DN 752, Objec. at 6, and an "unconscionable choice" Mr. Jones might have faced, *id.* at 7, are not evidence.

It is undisputed that Mr. Jones is in contempt of court. The plaintiffs request that the Court so find.

II. RELIEF SOUGHT

The plaintiffs seek to depose Mr. Jones; to ensure that his refusal to be deposed on March 23-24 does not become a means for the Jones defendants to delay the hearing in damages or extend the present scheduling order; and to remedy prejudice to themselves, to the extent possible, caused by Mr. Jones's refusal to be deposed as scheduled and agreed. The plaintiffs' requests for relief are framed with these three purposes in mind.

In order to accomplish these purposes, the condition set for Mr. Jones to purge his contempt should be that Mr. Jones be deposed in Connecticut before April 15. This was requested in our 3/25 Motion. The Jones defendants did not object to this condition, nor have they provided any evidence to establish why it would be unreasonable or inappropriate. The Court should impose it.

A. Findings of Established Fact/Exclusion of Evidence

As noted in the 3/25 Motion, Practice Book subsections 13-4(3) and (4) provide for the determination of established facts and the exclusion of evidence as remedies for noncompliance with discovery.

1. Findings of Established Fact

With regard to relief available under § 13-4(3), the plaintiffs request that the Court notify the Jones defendants that if Mr. Jones does not complete his deposition before April 15, it will charge the jury on the facts of Mr. Jones's non-appearance and the resulting adverse inference against all the Jones defendants substantially as follows:

> The parties in a civil case such as this have the right to take each others' depositions;
> Mr. Jones took advantage of those rights by deposing the plaintiffs in this case;
> The plaintiffs also sought to depose Mr. Jones;
> Mr. Jones, through his counsel, agreed to be deposed on March 23 and March 24 in Austin, Texas;
> The plaintiffs' counsel flew to Austin, Texas to depose Mr. Jones as agreed;
> Mr. Jones did not attend his deposition on March 23;
> Mr. Jones presented no acceptable excuse to the Court for his failure to attend his deposition;
> On March 23, the Court held an emergency hearing and ordered Mr. Jones to attend his deposition on March 24;
> Mr. Jones presented no acceptable excuse to the Court for not attending his March 24 deposition;
> The plaintiffs' counsel remained in Austin in order to take Mr. Jones's deposition on March 24;
> Mr. Jones did not attend his deposition on March 24, in violation of the Court's order;
> As a result of Mr. Jones's refusal to comply with the Court's rules and orders, the plaintiffs were unable to ask Mr. Jones questions concerning his actions at issue in this case, and were unable to receive sworn answers to those questions, even though he had exercised his right to question the plaintiffs and receive their sworn answers;
> Because Mr. Jones violated the rules and orders of the Court, and deprived the plaintiffs of the ability to present you with his deposition testimony, I hereby instruct you that you should presume that Mr. Jones's testimony would have been unfavorable to him, and favorable to the plaintiffs, <u>on any issue relevant to your consideration of damages</u>.

The plaintiffs propose to conform the underlined portion of the charge to the evidence following the close of evidence.

To the extent the plaintiffs proposed that the Court enter other findings of established fact in their Motion for Contempt, those requests are withdrawn.

2. Exclusion of Evidence

With regard to the relief available under subsection (4), the plaintiffs request that the Court conditionally exclude all affirmative evidence the Jones defendants may offer at the hearing in damages, including witness testimony and documentary evidence.[4] Mr. Jones is the primary wrongdoer in this case. He is also the key decision-maker: he owns and controls all the corporate defendants and makes all the decisions for them.[5] He cannot refuse to testify himself while still offering the cherry-picked testimony of his employees and curated documentary evidence to defend himself and his companies. The plaintiffs request that the Court enter this exclusion order conditionally: if Mr. Jones purges his contempt by completing his deposition before April 15, then this order could be rescinded. If he does not, it will become permanent as against all of the Jones defendants.

B. Escalating Fine

The plaintiffs proposed conditional fines commencing two days after the entry of the Court's ruling on plaintiffs' Motion for Contempt and continuing until Mr. Jones is deposed beginning at $25,000 per day and escalating to $50,000 per day.[6]

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[4] The default and the Court's ruling striking the Jones defendants' § 17-34 Notice already preclude the Jones defendants from offering evidence regarding liability.

[5] *E.g.* Ex. B, Jones's Answers to Plaintiffs' First Set of Interrogatories at 1, (admitting Jones "[has] ownership and/or control of … Free Speech Systems LLC, InfoWars LLC, InfoWars Health LLC, and PrisonPlanet TV LLC" and is the sole officer, member and shareholder of these entities.); Ex. C, Dew Dep. at 16-17 (May 16, 2019) (Alex Jones "was the primary employee responsible for investigating and reviewing information related to Sandy Hook"); Ex. D, Zimmerman Dep. at 87 (June 24, 2021) (Alex Jones has sole control over the disposition of FSS profits); Ex. E, Paz Dep. at 73, 76 (March 15, 2022) (Alex Jones has authority to decide what FSS publishes; is responsible for all FSS policies and practices; sets FSS corporate culture).

[6] In the plaintiffs' view, the last day by which Mr. Jones's rescheduled deposition could be

The Jones defendants object to the imposition of such a fine because Mr. Jones could be forced to pay the fine while the plaintiffs' counsel take time to prepare for deposition. DN 752, Def. Br. at 8. Since the fine would be conditional, i.e. refundable to Mr. Jones in whole or in part once he purges his contempt, and since Mr. Jones has created this situation, including forcing plaintiffs' counsel to re-prepare, this is not a reasonable objection.

C. Conditional Incarceration

The plaintiffs also propose incarceration solely as a means to coerce Mr. Jones to attend his deposition. The Jones defendants object to incarceration because – they claim – it would be "gratuitous," since the timing and mechanism of enforcement are dependent on Texas courts. DN 752, Def. Br. at 8. The plaintiffs would pursue all statutory and equitable means available to enforce the incarceration penalty.[7] If, in the Court's judgment, the risk of incarceration is likely to cause Mr. Jones to cure his contempt, then it is an appropriate penalty.

The Jones defendants also object to the imposition of incarceration because Mr. Jones could be incarcerated while the plaintiffs' counsel take time to prepare for deposition. DN 752,

completed is April 15. If the Court were to allow Mr. Jones a longer period in which he could cure his contempt, the plaintiffs request that the fines continue to the completion of that period.

[7] The Jones defendants are flatly wrong when they claim that the plaintiffs "acknowledge" that an incarceration order "would be gratuitous at this point." DN 752, Def. Br. at 8. The plaintiffs maintain that an incarceration order may have the effect of coercing Mr. Jones to attend his deposition. The question is whether the Court believes such a sanction may be effective. Further, "a contemnor's self-serving statement that he or she will not cooperate should not, by itself, be considered by courts in determining whether to impose or continue to enforce an order of civil contempt. If it were, very few persons could ever be compelled to testify or cooperate." *In re Martin-Trigona*, 590 F. Supp. 87, 90 (D. Conn. 1984) (Cabranes, J.) (quoting *Matter of Dohrn*, 560 F. Supp. 179, 180 (S.D.N.Y. 1983)).

Def. Br. at 8. Since incarceration would be conditional, and since Mr. Jones has created this situation, including forcing plaintiffs' counsel to re-prepare, this is not a reasonable objection.

D. Reimbursement of Fees and Costs

The plaintiffs claim $39,157.76 for the fees and costs associated with the scheduled depositions of Mr. Jones in Austin, Texas on March 23, 2022 and March 24, 2022. These fees and costs are itemized more specifically in Exhibit F, attached hereto.

A portion of this sum is wasted time expended by four attorneys and one staff member before, during, and after the scheduled depositions. Fees for wasted time were calculated using the hourly rate for each attorney or staff member (see Exhibit F). Expended hours include travel, discussions with defense counsel, court hearings on 3/22/22 and 3/24/22, and the following briefing:

1. DN 731.00 – Plaintiffs' Objection to Defendants' Motion for Protective Order Re: Deposition of Alex Jones (March 22, 2022)
2. DN 734.00 – Plaintiffs' Emergency Motion for Order Requiring Alex Jones to Appear for Deposition on Penalty of Civil Contempt, Including the Issuance of an Order Directing the Arrest of Alex Jones in Order to Secure His Presence to Appear Before the Court and Testify (March 23, 2022)
3. DN 740.00 – Plaintiffs' Amended Supplemental Brief Regarding the Court's Authority to Issue Capias and Other Sanctions (March 23, 2022)
4. DN 743.00 – Plaintiffs' Amended Emergency Motion for Order Requiring Alex Jones to Appear for Deposition on Penalty of Civil Contempt, Including the Issuance of an Order Directing the Arrest of Alex Jones in Order to Secure His Presence to Appear Before the Court and Testify (March 23. 2022)
5. DN 745.00 – Plaintiffs' Notice That Alex Jones Did Not Appear at His Court-Ordered Deposition (March 24, 2022)
6. DN 750.00 – Plaintiffs' Motion for Finding of Civil Contempt, Issuance of Orders to Secure Alex Jones Attendance at Deposition, And Issuance of Further Sanctions Orders (Mach 25, 2022)

All other claimed costs are claimed on behalf of the two attorneys and one staff member who traveled to Austin, Texas for the sole purpose of these depositions. Costs associated with travel to Austin consist of the following: court reporting services, transcript production, professional

videography, flights, hotel lodging, travel to and from airports, travel within Texas, meals while traveling, and meals within Texas. These expenditures were wasted by Mr. Jones's decision to defy court orders at the eleventh hour and not appear at both of his scheduled depositions.

E. Scheduling Accommodations

The plaintiffs reserve the right to seek such scheduling accommodations as may be necessary to compensate for Mr. Jones's refusal to be deposed on March 23-24.

III. CONCLUSION

For all these reasons, the plaintiffs request the relief previously described.

THE PLAINTIFFS,

By: /s/ *Alinor C. Sterling*
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JURIS #32250

CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or nonelectronically on this date to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served.

For Alex Emric Jones, Infowars, LLC, Free Speech Systems, LLC, Infowars Health, LLC and Prison Planet TV, LLC:
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/s/ *Alinor C. Sterling*
ALINOR C. STERLING
CHRISTOPHER M. MATTEI
MATTHEW S. BLUMENTHAL

EXHIBIT A

NO. X06-UWY-CV-18-6046436-S : SUPERIOR COURT

ERICA LAFFERTY, ET AL. : COMPLEX LITIGATION DOCKET

V. : AT WATERBURY

ALEX EMRIC JONES, ET AL

NO. X06-UWY-CV-18-6046437-S : SUPERIOR COURT

WILLIAM SHERLACH : COMPLEX LITIGATION DOCKET

V. : AT WATERBURY

ALEX EMRIC JONES, ET AL

NO. X06-UWY-CV-18-6046438-S : SUPERIOR COURT

WILLIAM SHERLACH, ET AL. : COMPLEX LITIGATION DOCKET

V. : AT WATERBURY

ALEX EMRIC JONES, ET AL

CERTIFICATE OF NONAPPEARANCE
FOR THE ORAL DEPOSITION OF ALEX EMRIC JONES
MARCH 24, 2022

I, Gabriela Silva, Certified Shorthand Reporter in and for the State of Texas, certify:

That I appeared at Homewood Suites by Hilton Austin South, 4143 Governor's Row, Board Room, Austin, Texas on the 24th day of March, 2022, to report the oral deposition of ALEX EMRIC JONES, pursuant to the attached Memorandum, scheduled for 9:00 a.m.

That at 9:01 a.m., the witness was not present. Present for the deposition in-person were CHRISTOPHER M. MATTEI, MATTHEW S. BLUMENTHAL, Attorneys for Plaintiffs; NORMAN PATTIS, Attorney for Defendants; and via Zoom, MARIO KENNETH CERAME, Attorney for Genesis Communications Network, Inc.

A P P E A R A N C E S:

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CHRISTOPHER M. MATTEI, ESQ.
MATT BLUMENTHAL, ESQ.

ATTORNEYS FOR THE DEFENDANTS:
FOR ALEX EMRIC JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, INFOWARS HEALTH, LLC and PRISON PLANET TV, LLC:
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NORMAN A. PATTIS, ESQ.

FOR GENESIS COMMUNICATIONS NETWORK, INC.:
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E-mail: mcerame@brignole.com

MARIO CERAME, ESQ. (Appearing remotely)

to Attorney Pattis' representation that he will not be producing himself for his deposition.

MR. PATTIS: Norm Pattis on behalf of Alex Jones and the Jones defendants. I would offer into the record -- and I have no dispute with any of the factual representations that -- that Attorney Mattei just recited.

I've spoken to Mr. Jones this morning and I've had communication with his physician after the Court's order yesterday. Mr. Jones intends to remain at home under his doctor's orders and understands that this is not the Court's order. But he is taking the position that the person who he is relying on for his physical health is the person who he will take his bearings from.

And I will read into the record in part, or maybe in whole, Jones Exhibit Number 2, which was provided to Counsel and filed in court yesterday and was considered by the Court when the Court rejected our Motion for Protective Order.

But it reads, To whom it may person -- and this is from a Dr. Amy Offutt, O-F-F-U-T-T, in Marble Falls, Texas. This morning, I had a medical visit with Mr. Alex Jones for acute medical issues that were time-sensitive and potentially serious. We started a comprehensive medical evaluation and he has labs that

CERTIFICATE

I further certify that I am neither employed nor related to any attorney or party in this matter and have no interest, financial or otherwise, in its outcome.

The cost of the Certificate of Nonappearance is $_____.

Given under my hand and seal of office on this 24th day of March, 2022.

Gabriela S. Silva, Texas CSR, RPR, CRR, RMR
Expiration Date: 01-31-23
U.S. Legal Support
Firm Registration No.: 342
363 North Sam Houston Parkway E
Suite 1200
Houston, Texas 77060
(361) 883-1716

EXHIBIT B

Docket No. FBT-CV-18-6076475-S	:	**JUDICIAL DISTRICT**
:		
ERICA LAFFERTY, et al.	:	**OF FAIRFIELD**
:		
v.	:	**AT BRIDGEPORT**
:		
ALEX JONES, et al.	:	**JANUARY 24, 2019**

RESPONSES TO PLAINTIFFS' FIRST SET OF SPECIAL INTERROGATORIES TO ALEX JONES

1. Identify:

a. All business organizations and/or other entities in which you have ownership and/or control
b. The officers or members of all organizations and/or entities responsive to part (a)
c. The shareholders or other owners of all organizations and/or entities responsive to part (a)
d. The employees of all organizations and/or entities responsive to part (a)

ANSWER:
a. I, Alex Jones, have ownership and/or control of the following business organizations and/or other entities: Free Speech Systems LLC, InfoWars LLC, InfoWars Health LLC, and PrisonPlanet TV LLC

b. I am the sole officer and member of all the organizations and/or entities responsive to part (a).

c. I am the sole shareholder and owner of all organizations and/or entities responsive to part (a).

d. The employees of all organizations and/or entities responsive to part (a) are attached hereto as Exhibit 1. Free Speech Systems has the employees listed in Exhibit 1, and the Department heads/managers are as follows: Rob Dew, Manager of Media/Video Production; Paul Joseph Watson, Editor/Manager of Writers; Tim Fruge, Director of Business Operations.

concerning that subject matter. Identify the owner of such domain names or URLs.

ANSWER:
Infowars.com, PrisonPlanet.com, prisonplanet.tv

5. Identify any witnesses you may call at a hearing on a special motion to dismiss.

ANSWER:
Alex Jones and the Plaintiffs

Under the penalty of perjury, I certify the above answers to these interrogatories are true and complete to the best of my knowledge.

alex jones Dated: 3-29-19
Alex Jones

Subscribed and Sworn before me:

[signature] Dated: 3-29-19
Timothy Fruge

My Commission Expires:

TIMOTHY JAMES FRUGE
Notary Public, State of Texas
Comm. Expires 04-21-2022
Notary ID 129791388

EXHIBIT C

NO. X06-UWY-CV-18-6046436S

NO. X-06-UWY-CV-18-6046436S	)	SUPERIOR COURT
	)	
ERICA LAFFERTY, ET AL.	)	COMPLEX LITIGATION DOCKET
	)	
V.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	MAY 6, 2019
	)	

NO. X-06-UWY-CV18-6046437-S	)	SUPERIOR COURT
	)	
WILLIAM SHERLACH	)	COMPLEX LITIGATION DOCKET
	)	
V.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	MAY 6, 2019

NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
	)	
WILLIAM SHERLACH, ET AL.	)	COMPLEX LITIGATION SUPPORT
	)	
V.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	MAY 6, 2019

****

ORAL AND VIDEOTAPED DEPOSITION OF
ROBERT DEW
MAY 16, 2019

****

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT DEW, produced as a witness at the instance of the Plaintiffs, and duly sworn, was taken in the above-styled and numbered cause on the 16th day of May, 2019, from 8:35 a.m. to 10:03 a.m., before AMBER KIRTON, CSR in and for the State of Texas, reported by machine shorthand, at the offices of Ken Owen & Associates, 801 West Avenue, Austin, Texas.

A P P E A R A N C E S

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THE VIDEOGRAPHER:

Ms. Taylor Willis

MR. MATTEI: He was asking me a question.

MR. PATTIS: He was in the middle of it and you cut him off and he's cut you off and you've stopped him. I'm asking you to stop to let him finish.

A. If you're not characterizing it as a task force -- we didn't have a group dedicated to investigating Sandy Hook.

Q. (BY MR. MATTEI) Fair enough. I'm asking you about your particular role, okay?

A. Uh-huh.

Q. Do you agree that you were primary employee responsible for investigating Sandy Hook and reviewing information related to Sandy Hook? Yes or no?

A. No, I don't think I was the primary.

Q. You disagree with that?

A. I was -- I was one of many.

Q. Okay.

A. Maybe two or three others.

Q. Okay. So you disagree that you were the primary employee?

A. I mean, it's hard to say. You know, everything goes through Alex. You show Alex stuff and he goes all right and he decides whether he's going to put it on the air or not.

Q. So in your judgment he was the primary employee responsible for investigating and reviewing information related to Sandy Hook. Fair?

A. Yeah, that's fair.
Q. Okay. All right. Let's talk about the -- kind of beginning in December 2012 and moving forward through today. I want to talk specifically about your involvement in the Alex Jones Show. How does -- how is it -- what's the process for determining what stories are aired on the Alex Jones Show?
A. Alex gets prenunsive (phonetic) articles. He looks at them and then he kind of -- whatever he decides is what goes on the show.
Q. Who provides -- and that's been true since December 2012 that's been the process generally?
A. Yeah. He's usually looking at his site and charge report.
Q. Okay. So he independently will do some, essentially, research on his own, right?
A. I'm not exactly sure how he does his research but the crew prints out articles for him.
Q. Okay. And do you supervise that process?
A. No.
Q. Okay. But you participate in it and you give him articles as well?
A. Correct.
Q. And how far in advance of a particular show will he receive that information?
A. I mean, before -- I would say maybe an hour before the

NO. X-06-UWY-CV-18-604636S	)	SUPERIOR COURT
	)	
ERICA LAFFERTY, ET AL.	)	COMPLEX LITIGATION DOCKET
	)	
V.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	MAY 6, 2019

NO. X-06-UWY-CV18-6046437-S	)	SUPERIOR COURT
	)	
WILLIAM SHERLACH	)	COMPLEX LITIGATION DOCKET
	)	
V.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	MAY 6, 2019

NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
	)	
WILLIAM SHERLACH, ET AL.	)	COMPLEX LITIGATION DOCKET
	)	
V.	)	AT WATERBURY
	)	
ALEX EMRIC JONES, ET AL.	)	MAY 6, 2019

REPORTER'S CERTIFICATION
VIDEOTAPED DEPOSITION OF
ROBERT DEW
MAY 16, 2019

I, AMBER KIRTON, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, ROBERT DEW, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness:

That the deposition transcript was submitted on May 21, 2019, to the witness or to the attorney for

Defendants for examination, signature and return to Huseby Global Litigation by June 10, 2019;

That the amount of time used by each party at the deposition is as follows:

Mr. Christopher M. Mattei - 01 hour(s): 10 minute(s)
Mr. Norman Pattis - 00 hour(s): 00 minute(s)
Ms. Kristen A. Jakiela - 00 hour(s): 00 minute(s)
Ms. Claire Pariano - 00 hour(s): 00 minute(s)

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes all parties of record:

Mr. Norman Pattis & Ms. Alinor C. Sterling, Attorneys for Plaintiffs
Mr. Norman Pattis, Esq, Attorney for Alex Emric Jones, InfoWars, LLC, Free Speech Systems, LLC, InfoWars Health, LLC and Prison Planet TV, LLC
Ms. Kristen A. Jakiela, Attorney for Cory T. Sklanka
Ms. Claire Pariano, Attorney for Midas Resources, Inc.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorney in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 21st day of May, 2019.

Amber Kirton, CSR
Expiration Date: 12/31/19
Firm #660
Huseby Global Litigation
1230 West Morehead Street, Suite 408
Charlotte, NC 28208
(800) 333-2082

EXHIBIT D

NO. X06-UWY-CV-18-6046436S	)	SUPERIOR COURT
ERICA LAFFERTY, ET AL,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL,	)	JUNE 24, 2021
NO. X-06- UWY-CV18-6046437-S	)	SUPERIOR COURT
WILLIAM SHERLACH,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 24, 2021
NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 24, 2021

CONFIDENTIAL

ORAL AND VIDEOTAPED DEPOSITION OF
FREE SPEECH SYSTEMS, LLC
BY
MICHAEL ZIMMERMANN
JUNE 24, 2021

ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL ZIMMERMANN, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on JUNE 24, 2021, from 9:00 a.m. to 4:10 p.m., before

Rosalind Dennis, Notary in and for the State of Texas, reported by machine shorthand, appearing remotely from Dallas, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

CHRISTOPHER M. MATTEI, ESQ.
MATTHEW S. BLUMENTHAL, ESQ.
KOSKOFF KOSKOFF & BIEDER, PC
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Cmattei@koskoff.com
mblumenthal@koskoff.com
(203) 336-4421

FOR THE DEFENDANTS:

JAY MARSHALL WOLMAN, ESQ.
RANDAZZA LEGAL GROUP
100 Pearl Street
14th Floor
Hartford, Connecticut 06103
jmw@randazza.com
(702) 420-2001

ALSO PRESENT:
Joel Raguso - Videographer

merchandise for sale on Infowars.com and other platforms it controls?

A. It does, yes.

Q. And do you know if the cost of that advertising is accounted for as a expense by Free Speech Systems?

A. I don't know if that's something that's even tracked. There's ads in many different places and, you know, some of them are -- are not even tracked links.

Q. Free Speech Systems is a -- a for-profit company, correct?

A. That's correct.

Q. And Alex Jones has sole control over the disposition of those profits?

A. That's correct.

Q. And since 2012, has Alex Jones reinvested any profits back into Free Speech Systems?

A. Yes.

Q. On what dates?

A. Unknown what the dates are.

Q. Okay. What's the total amount that Alex Jones has reinvested back in Free Speech Systems since 2012?

A. Unknown what the total amounts are. The company keeps financial records, but I don't have the whole books in my head.

Q. Okay. And you don't have that figure in your head,

NO. X06-UWY-CV-18-6046436S	)	SUPERIOR COURT
ERICA LAFFERTY, ET AL,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL,	)	JUNE 24, 2021
_____	)	
NO. X-06- UWY-CV18-6046437-S	)	SUPERIOR COURT
WILLIAM SHERLACH,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 24, 2021
_____	)	
NO. X06-UWY-CV-18-6046438S	)	SUPERIOR COURT
WILLIAM SHERLACH, ET AL.,	)	COMPLEX LITIGATION DOCKET
VS.	)	AT WATERBURY
ALEX EMRIC JONES, ET AL.	)	JUNE 24, 2021

REPORTER'S CERTIFICATION

DEPOSITION OF MICHAEL ZIMMERMANN

JUNE 24, 2021

I, Rosalind Dennis, Notary in and for the State of Texas, hereby certify to the following:

That the witness, MICHAEL ZIMMERMANN, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the original deposition was delivered to Mr. Mattei.

That the amount of time used by each party at the

deposition is as follows:

MR. MATTEI .....05 HOUR(S): 23 MINUTE(S)
MR. WOLMAN .....00 HOUR(S): 26 MINUTE(S)

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

Mr. Mattei Attorney for the Plaintiff.

Mr. Wolman Attorney for the Defendant.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Certified to by me this 12th day of July, 2021.

Rosalind Dennis

ROSALIND DENNIS
Notary in and for the
State of Texas
Notary: 129704774
My Commission Expires: 10/8/2022
US LEGAL SUPPORT
8144 Walnut Hill Lane
Suite 120
Dallas, Texas 75231
214-741-6001
214-741-6821 (FAX)
Firm Registration No. 343

EXHIBIT E

STATE OF CONNECTICUT
SUPERIOR COURT
COMPLEX LITIGATION DOCKET
HELD AT WATERBURY

- - - - - - - - - - - - - - - - - - - -X

ERICA LAFFERTY, et al.,
PLAINTIFFS,

vs. X06-UWY-CV18-6046436-S

ALEX EMRIC JONES, et al.,
DEFENDANTS.

- - - - - - - - - - - - - - - - - - - -X

WILLIAM SHERLACH,
PLAINTIFF,

vs. X06-UWY-CV18-6046437-S

ALEX EMRIC JONES, et al.,
DEFENDANTS.

- - - - - - - - - - - - - - - - - - - -X

WILLIAM SHERLACH, et al.,
PLAINTIFFS,

vs. X06-UWY-CV18-6046438-S

ALEX EMRIC JONES, et al.,
DEFENDANTS.
- - - - - - - - - - - - - - - - - - - -X

V I D E O T A P E D D E P O S I T I O N

The videotaped deposition of BRITTANY PAZ was taken pursuant to notice at the offices of Known Coworking, 39 Orange Street, 4, New Haven, Connecticut, before Viktoria V. Stockmal, RMR, CRR, license #00251, a Notary Public in and for the State of Connecticut, on Tuesday, March 15, 2022, at 10:04 a.m.

A P P E A R A N C E S:

ATTORNEYS FOR THE PLAINTIFFS:

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CHRISTOPHER M. MATTEI, ESQ.
ALINOR C. STERLING, ESQ. (Appearing remotely)
MATT BLUMENTHAL, ESQ. (Appearing remotely)
PRITIKA SESHADRI

ATTORNEYS FOR THE DEFENDANTS:

FOR ALEX EMRIC JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC, INFOWARS HEALTH, LLC and PRISON PLANET TV, LLC:

PATTIS & SMITH, LLC
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New Haven, CT 06511
Tel: 203-393-3017
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NORMAN A. PATTIS, ESQ. (Appearing remotely)
ZACH REILAND, ESQ.

FOR GENESIS COMMUNICATIONS NETWORK, INC.:

BRIGNOLE, BUSH & LEWIS
73 Wadsworth Street
Hartford, CT 06106
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E-mail: mcerame@brignole.com

MARIO CERAME, ESQ. (Appearing remotely)

ALSO PRESENT:

Joseph Raguso, Videographer

posted that he doesn't like, he'll talk to somebody and say, hey, you know, I didn't like this, or don't do this in the future. Perhaps he pulls it. But that doesn't happen very frequently. So, I don't think there's a process by which he's telling people don't do this, don't do that. There was a time after Sandy Hook happened and then the lawsuit -- maybe before the lawsuits, but he did ask people to stop talking about Sandy Hood. So, there is some control that he is exerting over the writing process and the production process; but for the most part, I think it's pretty lax there as far as what people want to say, they can write about and they can produce.

Q Okay.

Well, put it this way: To the extent it's lax, that's because Mr. Jones allows it to be lax; correct?

A Sure.

Q And if Mr. Jones saw something that was published that he didn't want published, he has the authority to take it off; right?

A Sure, he has the authority.

Q You don't disagree with Rob Dew's testimony as a corporate representative in Texas that any information that goes on the air is vetted by Alex; correct?

A Vetted by him?

Q Free Speech Systems has previously testified

testified to that on behalf of Free Speech Systems as well.

A He does not previously review what was going on air, so, no.

Q Okay.

So, the question I asked you was whether Mr. Dew's testimony that Alex Jones has full control of what airs was accurate or inaccurate?

A I don't think it's accurate.

Q Okay.

Mr. Jones is responsible for all policies and practices; correct?

A Ultimately, yes.

Q And he sets the corporate culture at Free Speech Systems?

A Yes.

Q And his team takes his lead on what should be covered; correct?

A I think that's fair. I think there's obviously an understanding that there is an ideology and to stick within that ideology.

Q That basic ideology is that -- is Mr. Jones's world view that an international group of moneyed interests are trying to bring about a new world order that establishes a tyrannical global government to strip

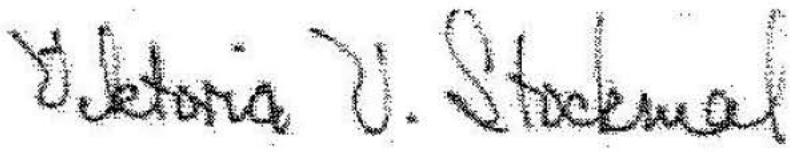
CERTIFICATE

STATE OF CONNECTICUT)
) SS SOUTHBURY
COUNTY OF NEW HAVEN)

I, VIKTORIA V. STOCKMAL, a Notary Public duly commissioned and qualified in and for the county of Fairfield, State of Connecticut, do hereby certify that pursuant to the notice of deposition, the said witness came before me at the aforementioned time and place and was duly sworn by me to testify to the truth and nothing but the truth of his/her knowledge touching and concerning the matters in controversy in this cause; and his/her testimony reduced to writing under my supervision; and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney of nor counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 20th day of March, 2022.



VIKTORIA V. STOCKMAL, RMR, CRR
Notary Public
CSR License #00251

My commission expires October 31, 2025

EXHIBIT F

Alex Jones Deposition Costs			**$ 39,157.76**
Staff	**Category**	**Date**	**Price**
Alinor C. Sterling ($500/hr)	Expended Hours (11.5)	3/23/22 - 3/25/22	**$ 5,750.00**
Christopher M. Mattei ($500/hr)	Expended Hours (28.5)	3/20/22 - 3/25/22	**$ 14,250.00**
Matthew Blumenthal ($300/hr)	Expended Hours (20)	3/20/22 - 3/25/22	**$ 6,000.00**
Colin S. Antaya ($250/hr)	Expended Hours (5)	3/20/22 - 3/25/22	**$ 1,250.00**
Pritika Seshadri ($85/hr)	Expended Hours (23)	3/21/22 - 3/24/22	**$ 1,955.00**
	US LEGAL - Transcript Day 1	3/23/2022	**$ 915.00**
	US LEGAL - Transcript Day 2	3/24/2022	**$ 785.75**
	US LEGAL - Video Day 1	3/23/2022	**$ 325.00**
	US LEGAL - Video Day 2	3/24/2022	**$ 1,120.00**
Person 1	Hotel - 5 nights (pre tax)	3/20/22 - 3/24/22	**$ 1,654.20**
Person 2	Hotel - 3 nights (pre tax)	3/21/22 - 3/24/22	**$ 889.20**
Person 3	Hotel - 2 nights (pre tax)	3/23/22 - 3/25/22	**$ 870.00**
Person 1	Meals	3/20/22 - 3/25/22	**$ 211.16**
Person 2	Meals	3/21/22 - 3/23/22	**$ 141.70**
Person 3	Meals	3/23/22 - 3/24/22	**$ 93.82**
Person 1	Flights	3/9/2022	**$ 778.80**
Person 2	Flights	3/9/2022	**$ 756.40**
Person 3	Flights	3/22/2022; 3/24/2022	**$ 592.17**
Person 1	Travel To/From Airports & In Texas	3/20/22 - 3/24/22	**$ 181.30**
Person 2	Travel To/From Airports & In Texas	3/21/22 - 3/24/22	**$ 293.70**
Person 3	Travel To/From Airports & In Texas	3/23/22 - 3/24/22	**$ 344.56**

EXHIBIT G

2017 WL 5641591
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Hartford, Complex Litigation Docket at Hartford.

James R. MCBURNEY, et al.

v.

Antoinette VERDERAME, et al.

James G. McBurney, et al.

v.

Peter Paquin, et al.

X07HHDCV9940127738S
|
X07HHDCV014027736S
|
October 23, 2017

Opinion

Sheridan, J.

***1** Before the court in these two related cases are identical motions for contempt filed by the intervening defendant Leslie Carothers against the plaintiffs James and Erin McBurney. Ms. Carothers contends that the McBurneys are in contempt of an order of this court by reason of the installation of large boulders across an area over which she has an implied easement to pass and repass. Specifically, Ms. Carothers alleges that in 2012 the McBurneys "intentionally and willfully placed, and continue to maintain, large boulders between the lawn in front of their property and the Sound, which boulders block passage from the lawn to the slope, beach and shoreline." Ms. Carothers seeks a finding that the McBurneys are in contempt of court, an order that they remove the boulders, and an award of reasonable attorneys fees and costs associated with the motions for contempt.

The present motion was filed on February 8, 2017. On May 11, 2017, the court and counsel viewed the area in question. On May 16, 2017, the court held an evidentiary hearing at which both parties presented testimony and documentary evidence. Post-hearing briefs were filed, and the court heard the parties at argument on June 27, 2017.

For the reasons set forth below, the motion to compel is denied. The moving party has not met her burden of showing by clear and convincing evidence that there has been willful disobedience of an order of this court which cannot be excused by a good-faith dispute or misunderstanding.

I. FACTUAL FINDINGS

A trial court presented with a motion for contempt must exercise its discretion, as informed by factual findings. *Bunche v. Bunche,* 36 Conn.App. 322, 325 650 A.2d 917 (1994). The historical background of this dispute has been detailed in numerous court decisions and is fully set forth again in the parties' memoranda and exhibits. In the interest of expediting a decision, familiarity with that background will be presumed and those facts will not be repeated here.

Having reviewed the documentary exhibits and evaluated the demeanor and credibility of the witnesses, having analyzed and weighed the evidence according to the applicable standards of law, and having considered the parties' arguments and memoranda of law, this court finds the following facts to have been proven by clear and convincing evidence.

The moving party, Leslie Carothers, has been the record owner since 1998 of what was designated as "Lot 14" on the Baker Plan, with an address of 22 Crescent Bluff Avenue. The alleged contemnors, James and Erin McBurney, have been the record owners since 1997 of "Lot 4" on the Baker Plan.

At the time the Baker Plan was filed, at the southernmost edge of the development was a grassy slope or "bank" leading down to a "strip of beach" approximately twenty feet below. *Fisk v. Ley,* 76 Conn. 295, 56 A. 559 (1903). The Great Hurricane of 1938 all but obliterated that grassy slope. Following that hurricane, the individual who owned Lot # 4 rebuilt his frontage with a seawall, a walkway on top of the seawall, and a poured concrete "ramp" where the grassy slope had been.

***2** When the McBurneys purchased their home in 1997, the concrete ramp was nearly sixty years old and was in poor repair. Between 1997 and 2011, the McBurneys and the adjoining shorefront owner, the Lowlichts, made various proposals to reconstruct the seawall with a paved

walkway on top and replace the collapsing concrete ramp with stonework to protect the slope. These proposals were submitted to agencies such as the Branford Planning and Zoning Commission and discussed periodically with the interior owners and their legal counsel, but never built.

At various times, the McBurneys also sought permission of this court to modify Judge Shortall's 2008 order and permit the McBurneys to replace the concrete ramp with a new structure built from riprap. In November 2008, Judge Shortall refused to allow the replacement of the ramp, reasoning that, because the proposed design incorporated stone riprap rather than concrete slabs, it would have constituted an obstruction of the implied easement. (See Docket entries # 191.00 through # 193.00.) In July 2011, a similar motion to replace the concrete slope was filed (see Docket entries # 203.00 through # 207.00). The motion stressed that the replacement structure would not interfere with the implied easement, because it would consist of large blocks of stone with exposed surfaces that were flat, rather than angular.

That motion was pending before the court when, on August 28, 2011, Hurricane Irene hit the Connecticut shoreline with winds of up to 75 miles per hour and a storm surge as much as 8 feet above high tide. The seawall in front of the McBurney and Lowlicht homes was destroyed. Without the protection of the seawall, the slope and the concrete ramp were completely washed out. A massive hole was left where the concrete ramp had once been, filled with a shattered concrete slab. The McBurney and Lowlicht properties were unprotected and dangerously exposed to the waters of Long Island Sound.

On August 31, 2011, the Department of Energy and Environmental Protection ("DEEP") issued an emergency authorization allowing waterfront property owners to repair and rebuild seawalls that had existed before the hurricane. The emergency authorization required the installation of riprap on the landward slope behind the McBurney and Lowlicht seawall, where the poured concrete ramp had previously existed. Through correspondence with counsel, the McBurneys informed Carothers and her co-defendants that they intended to replace the concrete ramp with rip rap in accordance with the DEEP emergency authorization.

The McBurneys also sought permission of this court to restrict access to the damaged area during the re-construction. An emergency hearing on that question was held by the court on September 15, 2011. At the hearing, legal counsel for the McBurneys, Attorney Klau, informed the court and the other litigants that because of the scope of the destruction caused by the hurricane, the plans for replacement of the concrete slope that had been presented in 2008 and 2011 had been abandoned. "[I]t would be enormously expensive to build the structure that we had proposed originally. So our intention is simply to put in standard riprap, large boulders that the DEP has authorized, which will shore up the property, prevent it from collapsing, and protect it from future erosion." (See Transcript, September 15, 2011 hearing, p. 24, lines 20 to 26.)

Attorney Klau expressly acknowledged that the area of riprap that was authorized by the DEEP for the repair of the slope "might not be passable." Counsel for Ms. Carothers and the other defendants, Attorney Gallagher, responded that he was learning for the first time at the hearing that riprap would be installed without regard to any rights his clients might have to pass over that area. Nonetheless, he commented: "Now, it may well be that that's a matter that we can sit down and work out, or if the riprap is installed in such a way that we can be heard at a later time as to whether a surface can be made so that we can pass over it, those are other issues." (See Transcript, September 15, 2011 hearing, p. 30, lines 18 to 22.)

***3** The judge at the September 15, 2011 hearing, Judge Bright, picked up on this and commented:

> And I think, Attorney Gallagher, you are correct, the best thing for you all to do is sit down and figure out how this gets shored up while preserving everyone's rights in the future to come back and figure out what that means. So if that means putting in riprap and the choice is do you put in the gargantuan boulders that can never be moved to make it impractical to address the issue in the future, I think that's somewhat problematic.
>
> If there's a different type of riprap that can be put in that can be modified should a court order it to be modified, I think that makes sense. Because if the plaintiffs decide that they are going to take an approach which will make it impractical in the future or exceedingly expensive in the future to modify it if a court thinks it should be modified, they do that at their own peril, because I will not be sympathetic to a claim by a plaintiff that says, Look, we put in this riprap and, yeah, we could have done it in a different way, but we put it in a different way, and now it's going to cost a really huge sum of money to put in access. Well, that's a tactical decision they made to try to box in the court, and if they do that, I'm not likely to be sympathetic to it. So I understand the practical situation that everybody finds themselves in right now, and I understand that it can't

> be ignored and life can't go on as these defendants would have liked in the past with access, but at the same time there has to be understanding on the other side that the court may want to have—it's going to deal with an issue in the future where you're going to move to terminate the easement, that you should be careful about engaging in a course of conduct now which makes, in your view, your motion a fait accompli, because I am not going to view it that way if there was another alternative that could have been used.

(See Transcript, September 15, 2011 hearing, pp. 31–33).

After the September 15, 2011 hearing, the McBurneys' counsel wrote to Carothers' counsel, Attorney Gallagher: "Per the agreement reached in Court last week, I believe you were going to meet with your clients and let us know whether they would take the position that the McBurneys/Lowlichts are required to rebuild the ramp/seawall. Could you let me know what their position is?" Attorney Gallagher replied to the e-mail from Attorney Klau by stating: "[M]y clients will not require the McBurneys or Lowlichts to rebuild the ramp and the seawall."

The McBurneys proceeded with repairing the seawall and slope. They retained professional contractors to build the new seawall/rip rap structure and to ensure that it complied with all DEEP requirements, including height restrictions concerning the seawall. The seawall walkway was not rebuilt. Large, angular boulders were installed to cover the slope and the top of the repaired seawall. To the west of the McBurney property, the Lowlichts rebuilt and restored their property differently, building a walkway on top of the seawall with a protective railing. The boulders/riprap installed by the McBurneys atop the seawall were much higher than the walkway on the adjacent Lowlicht lot, with no railing for the benefit of persons who chose to walk on top of the seawall.

***4** Apparently, the McBurneys' contractor violated the requirements of the August 31, 2011 DEEP Emergency Certification which mandated that any rebuilt seawall be "the same height" as the preexisting seawall. In April 2012, the DEEP notified the McBurneys that the height of the new seawall they had built exceeded permissible limits. The McBurneys' contractor then returned and removed boulders from the top of the seawall to reduce the height and comply with the permit. The result left the top of the seawall "with a narrow and irregular width, uneven footing, an obstructing boulder at the east end next to the concrete stairs, and no handrail or guardrail despite an exposure above the beach of more than eight feet." (See Carothers' June 12, 2017 Post–Hearing Brief [# 280] at p. 9.) As a result, the defendants complain, "what exists today is an impassable area of large, jagged boulders where the concrete slope and seawall walkway used to be, and at the top of the seawall, an unsafe, narrow path that is not accessible at its east end." *Id.*

II. LEGAL STANDARD AND BURDEN OF PROOF

In a civil contempt proceeding, the movant has the initial burden to show that there was a clear and unambiguous order entered by the court and that the alleged contemnor is not in compliance with that order. *In re Leah S., supra*, 284 Conn. 685, 693–94, 935 A.2d 1021 (2007); *Isler v. Isler,* 50 Conn.App. 58, 66–69, 716 A.2d 938 (1998), rev'd on other grounds, 250 Conn. 226, 737 A.2d 383 (1999). But, "[n]oncompliance alone will not support a judgment of contempt." (Internal quotation marks omitted.) *Prial v. Prial,* 67 Conn.App. 7, 14, 787 A.2d 50 (2001). In order to constitute contempt, a party's disobedience must be wilful. *Eldridge v. Eldridge,* 244 Conn. 523, 529, 710 A.2d 757 (1998). "A court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was willful." *Wilson v. Wilson,* 38 Conn.App. 263, 275–76, 661 A.2d 621 (1995).

Therefore, if noncompliance with a sufficiently clear and unambiguous court order is found, the court must then determine whether the defiance of the court order is willful, or whether it may be excused by a good faith dispute or misunderstanding. *In re Leah S., supra*, 284 Conn. at 694; see also, *Eldridge v. Eldridge, supra*, 244 Conn. at 526–27. The ultimate conclusion as to whether a good faith dispute or misunderstanding will excuse a finding of contempt is within the discretion of the court. *Bank of New York v. Bell,* 142 Conn.App. 125, 131, 63 A.3d 1026, cert. denied, 310 Conn. 901, 75 A.3d 31 (2013).

A finding of indirect civil contempt must be based on facts proven by clear and convincing evidence. *Brody v. Brody,* 315 Conn. 300, 318–19, 105 A.3d 887 (2015). Clear and convincing proof "denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution ... [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist

is substantially greater than the probability that they are false or do not exist." *O'Connor v. Larocque,* 302 Conn. 562, 576, 31 A.3d 1 (2011).

III. ANALYSIS

A. The Order is Sufficiently Clear and Unambiguous

The court must first determine whether the underlying order constituted a court order that was sufficiently clear and unambiguous so as to support a judgment of contempt. Civil contempt is committed only upon a showing that a person has violated or disobeyed an order of the court which requires "that person in specific and definite language to do or refrain from doing an act or series of acts." (Emphasis in original; internal quotation marks omitted.) *Parisi v. Parisi,* 315 Conn. 370, 382, 107 A.3d 920 (2015).

In this case, the order that is the subject of the motion for contempt specifically required that the McBurneys refrain from the act of erecting "any barriers, fences, plantings or other obstructions which prevent the rear lot owners from using or enjoying their easement or in any other way interfere with or impede the rear lot owners in their use of the easement they enjoy over the Lawn."

***5** This court has previously held that Judge Shortall's order is clear and unambiguous. It is an uncomplicated prohibition against "any barriers, fences, plantings or other obstructions" that "prevent ... or in any other way interfere with or impede" the use of the easement. The interior lot owners may use the easement for passing to and returning from "the shoreline," which is described as "including the concrete slope, the seawall walkway and the rocks, and whatever beach there may still be adjoining the Sound."

The court finds that the order is sufficiently clear and precise to guide the conduct of the parties and will support a finding of contempt for a willful violation.

B. Noncompliance

Ms. Carothers argues that, in a fashion similar to the fences this court has previously ordered removed, the "jagged boulders" installed by the McBurneys hinder, restrict and make perilous any passage across the area where the concrete ramp and the seawall used to be and therefore are not in compliance with the court's order. Ms. Carothers maintains that the boulders force easement holders trying to walk west to the beach and shoreline to walk on top of and between large, uneven boulders more than eight feet above the beach, with no handrail or other safety provision, at risk to their personal safety.

It cannot be disputed that the riprap that was installed by the McBurneys in 2011 and 2012 to some degree interferes with or impedes a person passing to or returning from the shoreline. That was a reality recognized before the riprap was installed, and discussed at the September 15, 2011 hearing. The court finds that the conditions created by the McBurneys when they repaired the slope and seawall are not in compliance with the order's prohibition of activities that "prevent ... or in any other way interfere with or impede" the use of the easement.

C. Willfulness

The court must next determine whether the noncompliance is the result of willful disobedience, or whether it may be excused by a good faith dispute or misunderstanding. As this court has previously observed, although the cases employ the word "willful" regularly, there is scant case law illuminating what exactly does—or does not—constitute "willful" disobedience of a court order. It has been described as "a word of many meanings whose construction is often dependent on the context in which it appears." (Internal quotation marks omitted.) *Bryan v. United States,* 524 U.S. 184, 191, 118 S.Ct. 1939, 1944–45, 141 L.Ed.2d 197 (1998). Certainly, wilful conduct must be voluntary and intentional, planned and deliberate. Beyond that, much depends upon the context of the conduct and the state of mind of the alleged contemnor.

Before finding a person in contempt for the willful violation of a court order, the court must consider the circumstances and facts surrounding the violation. *Wilson v. Wilson,* 38 Conn.App. 263, 275–76, 661 A.2d 621 (1995). "It is within the sound discretion of the court to deny a claim for contempt when there is an adequate factual basis to explain the failure to honor the court's order." (Internal quotation marks omitted.) *Parisi v. Parisi,* 140 Conn.App. 81, 85–86, 58 A.3d 327, cert. granted on other grounds, 308 Conn. 916 (2013). "Because the inability of [a party] to obey an order of the court, without fault on his part, is a good defense to a charge of contempt ... the [party has] the right to demonstrate

that his failure to comply with the order of the trial court was excusable." (Citations omitted; internal quotation marks omitted.) *Bryant v. Bryant,* 228 Conn. 630, 637, 637 A.2d 1111 (1994).

***6** In the present case, the installation of the seawall and riprap was the culmination of a process requiring a great deal of planning and decisionmaking, rather than any form of spontaneous reaction or negligent blunder. It was done in response to exigent circumstances which none of the parties appear to have reasonably anticipated, and which they could have done little to prevent. There is some evidence to suggest that the damage caused by Hurricane Irene was so severe that to repair the seawall and concrete ramp in a fashion that would maintain the same degree of access for the defendants would have been cost-prohibitive. Under those circumstances, for the McBurneys to rebuild the slope and shore up their property as quickly and inexpensively as possible—even if there was a detrimental effect on access—does not constitute reckless or malicious conduct.

Moreover, it is not entirely clear that the McBurneys should have been aware that they were acting in violation of a known legal duty. The history of this area makes it abundantly clear that forces of nature are continually eroding and altering the topography in the vicinity of the shoreline that was the subject of the easement. When nature drastically alters the shoreline, what are the legal obligations of the shorefront owners with respect to maintaining the interior lot owners' ability to pass to and from the shoreline? There is no direction or guidance in the implied easement recognized by the Supreme Court's decision in *Fisk v. Ley,* 76 Conn. 295, 300, 56 A. 559 (1903)—or in Judge Shortall's decision defining the scope of that easement—as to obligations to repair and maintain the easement area. The McBurneys maintain that they have no legal obligation; the interior lot owners challenge that assertion. The comments of Judge Bright at the September 15, 2011 hearing demonstrate that the question was far from settled at that time—and it has not been settled since. The court finds that there was a good faith dispute between the parties as to their respective rights and obligations with regard to the implied easement in the aftermath of a natural phenomenon such as Hurricane Irene.

The McBurneys were confronted with a gaping hole perilously close to their shorefront home. They filled the hole and repaired the slope, shoring up the property and strengthening it against future storm events. They did so under the supervision of the DEEP. They informed the court and the defendants of their plans and received from the defendants the imprecise assurance that they would not be required "to rebuild the ramp and the seawall." Under those circumstances, and in the absence of any express directives of the court regarding repair or maintenance of the order, the court cannot find by clear and convincing evidence that there has been willful disobedience of Judge Shortall's 2008 order. The McBurneys acted with full knowledge that the installation of the riprap might make access to the shoreline difficult. But they also acted at the direction and with the permission of the DEEP, and they also had some reason to believe that the defendants were not objecting to that course of action.

Ms. Carothers attempts at several junctures to equate the intentional installation of "jagged boulders" by the McBurneys with the fences installed by Beachcroft that were the subject of this court's prior ruling on a motion for contempt. In the view of the court, the circumstances attendant to the construction and maintenance of those fences are quite different from those present here. At the outset, those fences were not installed to repair or replace any existing improvements that had historically been in place for decades. Second, those fences were not reasonably necessary to any function *other than* blocking or controlling the passage of persons across the Lawn. Third, those fences were unilaterally installed without any oversight of the court or regulatory agencies, and without any prior notice to or communication with interior lot owners.

***7** "[A] civil contempt finding should not attach to an individual just because it is more likely than not that an injunction was disobeyed beyond the eyes of a court." *Brody v. Brody,* 315 Conn. 300, 319, 105 A.3d 887 (2015). The court finds that the defendant has failed to meet her burden of proving willful disobedience of a court order under the heightened standard of proof by clear and convincing evidence.

IV. CONCLUSION

The motion for contempt is denied. Each party shall bear its own costs.

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Hartford, Complex Litigation Docket at Hartford.

OFFICE OF CHIEF DISCIPLINARY COUNSEL

v.

David CHOMICK

HHDCV176084919S

June 19, 2019

Opinion

Sheridan, J.

***1** Before the court is a Motion for Contempt filed by the Office of Chief Disciplinary Counsel, pursuant to Practice Book Section 1-13A, against David Chomick for failure to comply with the court orders contained in an Order dated February 21, 2018 (#104.00). Specifically, the Court (Sheridan, J.) ordered that "[o]n or before January 31, 2019, the Respondent shall provide to the plaintiff his 2018 MCLE log, together with certificates of attendance or similar documentation issued by the course providers, if applicable." The Disciplinary Counsel alleges that the Respondent did not provide the 2018 MCLE log on or before January 31, 2019. The present motion was filed on May 15, 2019. The court held hearings on June 11, 2019 and June 18, 2019, at which the Respondent appeared and was heard.

For the reasons set forth below, the motion is granted. The moving party has met its burden of showing by clear and convincing evidence that there has been willful disobedience of an order of this court which cannot be excused by a good-faith dispute or misunderstanding.

FACTUAL FINDINGS

A trial court presented with a motion for contempt must exercise its discretion, as informed by factual findings. *Bunche v. Bunche,* 36 Conn.App. 322, 325 650 A.2d 917 (1994). This court finds the following facts to have been proven by clear and convincing evidence.

On February 21, 2018 the Court, in accordance with a stipulation of the parties, entered an Order (Docket Entry #104.00) requiring that the Respondent complete certain continuing legal education (CLE) courses and, on or before January 31, 2019, provide his 2018 MCLE log, together with certificated of attendance to Disciplinary Counsel.

Although the evidence and the record was far from clear and concise regarding the respondent's compliance with the requirement that he complete certain CLE courses within the 2018 Calendar year, there was never any dispute about his failure to provide the required MCLE log prior to January 31, 2019. The evidence clearly established that the first date that the Respondent delivered of any documentation purporting to relate to 2018 continuing legal education courses to the Disciplinary Counsel was on May 10, 2019. No rational or coherent explanation was ever given for the failure to provide the required document prior to that date.

II. LEGAL STANDARD AND BURDEN OF PROOF

In a civil contempt proceeding, the movant has the initial burden to show that there was a clear and unambiguous order entered by the court and that the alleged contemnor is not in compliance with that order. *In re Leah S., supra*, 284 Conn. 685, 693-94 (2007); *Isler v. Isler,* 50 Conn.App. 58, 66-69 (1998), rev'd on other grounds, 250 Conn. 226 (1999). But, "[n]oncompliance alone will not support a judgment of contempt." (Internal quotation marks omitted.) *Prial v. Prial,* 67 Conn.App. 7, 14 (2001). In order to constitute contempt, a party's disobedience must be wilful. *Eldridge v. Eldridge,* 244 Conn. 523, 529 (1998). "A court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was willful." *Wilson v. Wilson,* 38 Conn.App. 263, 275-76 (1995).

***2** Therefore, if noncompliance with a sufficiently clear and unambiguous court order is found, the court must then determine whether the defiance of the court order is willful, or whether it may be excused by a good faith dispute or misunderstanding. *In re Leah S., supra*, 284 Conn. at 694; see

also, See *Eldridge v. Eldridge, supra*, 244 Conn. at 526-27. The ultimate conclusion as to whether a good faith dispute or misunderstanding will excuse a finding of contempt is within the discretion of the court. *Bank of New York v. Bell,* 142 Conn.App. 125, 131, cert. denied, 310 Conn. 901.

A finding of indirect civil contempt must be based on facts proven by clear and convincing evidence. *Brody v. Brody,* 315 Conn. 300, 318-19 (2015). Clear and convincing proof "denotes a degree of belief that lies between the belief that is required to find the truth or existence of the [fact in issue] in an ordinary civil action and the belief that is required to find guilt in a criminal prosecution ... [The burden] is sustained if evidence induces in the mind of the trier a reasonable belief that the facts asserted are highly probably true, that the probability that they are true or exist is substantially greater than the probability that they are false or do not exist." *O'Connor v. Larocque,* 302 Conn. 562, 576 (2011).

III. ANALYSIS

A. The Order is Sufficiently Clear and Unambiguous

The court must first determine whether the underlying order constituted a court order that was sufficiently clear and unambiguous so as to support a judgment of contempt. Civil contempt is committed only upon a showing that a person has violated or disobeyed an order of the court which requires "that person in specific and definite language to do or refrain from doing an act or series of acts." (Emphasis in original; internal quotation marks omitted.) *Parisi v. Parisi,* 315 Conn. 370, 382 (2015).

In this case, the order that is the subject of the Motion for Contempt specifically required delivery of certain documentation before a certain date. There is no reason to believe the order was incomprehensible or unclear. In fact, the Respondent made no such claim that the order was unclear.

The court finds that the order is sufficiently clear and precise to guide the conduct of the Respondent and will support a finding of contempt for a willful violation.

B. Noncompliance

The failure to supply the required document on or before January 31, 2019 has been established by clear and convincing evidence.

C. Willfulness

The court must next determine whether the non-compliance is the result of willful disobedience, or whether it may be excused by a good faith dispute or misunderstanding. As this court has previously observed, although the cases employ the word "willful" regularly, there is scant case law illuminating what exactly does—or does not—constitute "willful" disobedience of a court order. It has been described as "a word of many meanings whose construction is often dependent on the context in which it appears." (Internal quotation marks omitted.) *Bryan v. United States,* 524 U.S. 184, 191, 118 S.Ct. 1939, 1944-45, 141 L.Ed.2d 197 (1998). Certainly, wilful conduct must be voluntary and intentional. Beyond that, much depends upon the context of the conduct and the state of mind of the alleged contemnor.

Before finding a person in contempt for the willful violation of a court order, the court must consider the circumstances and facts surrounding the violation. *Wilson v. Wilson,* 38 Conn.App. 263, 275-76 (1995). "It is within the sound discretion of the court to deny a claim for contempt when there is an adequate factual basis to explain the failure to honor the court's order." (Internal quotation marks omitted.) *Parisi v. Parisi,* 140 Conn.App. 81, 85-86, cert. granted on other grounds, 308 Conn. 916 (2013). "Because the inability of [a party] to obey an order of the court, without fault on his part, is a good defense to a charge of contempt ... the [party has] the right to demonstrate that his failure to comply with the order of the trial court was excusable." (Citations omitted; internal quotation marks omitted.) *Bryant v. Bryant,* 228 Conn. 630, 637 (1994).

***3** In the present case, the Respondent was the subject of disciplinary proceedings for exactly the same conduct that led to this Motion for Contempt, i.e., failing to respond to the Reviewing Committee's order to notify the Statewide Grievance Committee when he had completed required continuing legal education. (See Presentment, Docket Entry #100.30). Under these circumstances, the court cannot conceive of any legitimate excuse for the Respondent failing for the second time to carry out the simple requirement that he notify disciplinary authorities of his having completed his CLE requirements. Nor has the Respondent ever explained

why he ignored the reminder/warning from the Disciplinary Counsel about the need to comply with the court's order.

The court finds that the Disciplinary Counsel has met its burden of proving willful disobedience of a court order under the heightened standard of proof by clear and convincing evidence.

IV. CONCLUSION

For the foregoing reasons the court finds, based on clear and convincing evidence, that the Respondent's conduct in failing to provide Disciplinary Counsel a copy of his 2018 MCLE Log prior to January 31, 2019 was in willful disobedience of a sufficiently clear and unambiguous court order, and that the disobedience cannot be excused by a good faith dispute or misunderstanding. Therefore, the Court orders as follows:

1. The Respondent, David V. Chomick, Juris No. 428595, is hereby suspended from the practice of law for a period of twenty (20) days, commencing on June 21, 2019.

2. Linda Hadley, Juris No. 302693, of 977 Farmington Avenue, West Hartford, CT 06107, is hereby appointed as Trustee to take such steps as are necessary to protect the interests of Respondent's clients, to inventory Respondent's files, and to take control of the Respondent's clients' funds account(s). The Respondent shall cooperate with the Trustee in this regard.

3. The Respondent shall not deposit to, or disburse any funds from, his clients' funds accounts.

4. The Respondent shall comply with Practice Book § 2-47B (Restrictions on the Activities of Deactivated Attorneys).

All Citations

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